IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6965 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SEJALBEN ASHISHBHAI PATEL W/O ASHISHBHAI JAYANTIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6965 of 2002
MS. FAMINA CHAPATVALA for MR VIJAY H PATEL
for Petitioner No. 1-9
MS. MITA PANCHAL, APP for Respondent No. 1
MR BS PATEL for Respondent No. 2
MRS RANJAN B PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 12/08/2004

ORAL JUDGEMENT

Leave to annex Original Complaint registered vide Criminal Complaint No. 031/2002 in the Court learned JMFC, Savli as Annexure-G to the petition.

2. By means of filing this petition under Section 482 of the Code of Criminal Procedure ('the Code' for short), petitioners against whom Criminal Complaint No. 031/2002 is filed in the Court of learned JMFC, Savli, for commission of the alleged offences punishable under Sections 363, 366, 377, 380 and 114 of the IPC, which has been sent for police investigation under Section 156(3) of the Code to the Savli Police Station, where it came to be registered vide CR No. 10/2002, have prayed to quash and set aside the said complaint, order of sending the said complaint for police investigation under Section 156(3) of the Code as well as registration of FIR vide CR No. 10/2002 at Savli Police Station.

3. I have heard Ms. Famina Chapatvala, learned advocate of the petitioners, Ms. Mita Panchal learned APP appearing on behalf of respondent No.1 State of Gujarat and Mr. B.S.Patel learned advocate appearing on behalf of respondent No.2 - original complainant. I have also perused the averments made in the petition as well as complaint filed by respondent No.2 in the Court of learned JMFC, Savli which has been registered as Criminal Complaint No. 031/2002. I have also perused the order passed below Criminal Case No. 031/2002 for sending the same for police investigation under Section 156(3) of the Code as well as FIR registered vide CR No. 10/2002 at Savli Police Station.

4. On having perusal of all the aforesaid documents, it is seen that respondent No.2 has filed criminal complaint in the Court of learned JMFC, Savli for commission of the alleged offences punishable under Sections 363, 366, 377, 380 and 114 of the IPC on the accusation that accused No.2 Sejal Jainarain Patel, who is the daughter of respondent No.2, has been kidnapped by petitioner/accused Nos.1, and 3 to 9 with a view to rape accused No.2. It is alleged that accused No.2 has taken Rs.3000 which was given by the complainant for purchasing ornaments and that is how all of them have committed offence as alleged in the said complaint. It is surprising to note that in the said complaint complainant has arrayed her own daughter as accused No.2 who is

petitioner No.1 before this Court. At the time of the alleged incident she was undisputedly above 18 years of age. It is also not in dispute that accused No.2 - Sejal Jainarain Patel, who is petitioner No.1 herein is residing with Ashishbhai, whom she married. Therefore, according to this Court, learned JMFC, Savli who has passed the order of sending the said complaint for police investigation under Section 156(3) of the Code has exhibited absolute non-application of mind. There cannot be an offence against the persons allegedly kidnapped accused No.2. In fact accused No.2 was not kidnapped by the petitioner Nos.1, and 3 to 9.

5. In aforesaid view of the matter this Court is of the opinion that the Criminal Complaint No.031/2002 filed in the Court of learned JMFC, Savli and the order passed below it for sending the same for police investigation under Section 156(3) of the Code and registration of FIR vide CR No. 10/2002 at Savli Police Station, deserves to be quashed and set aside.

6. For the foregoing reasons, petition succeeds and accordingly it is allowed. All the aforesaid proceedings are hereby quashed and set aside. Rule is made absolute.

(A.M.Kapadia,J)

Jayanti*